



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 104/106

Charleston, WV 25301-1400

GASTON CAPERTON
GOVERNOR

TELEPHONE 304-348-2616

6 July 1990

Quewanncoii C. Stephens
Executive Director

Sharon D. Hedrick
c/o Dwight J. Staples, Esquire
Counsel for Complainant
711 1/2 Fifth Avenue
Huntington, WV 25701

Maurice J. Flynn, Esquire
909 Fifth Avenue
Huntington, WV 25701

Dwight J. Staples, Esquire
711 1/2 Fifth Avenue
Huntington, WV 25701

Lafe C. Chafin, Esquire
P. O. Box 402
Huntington, WV 25708

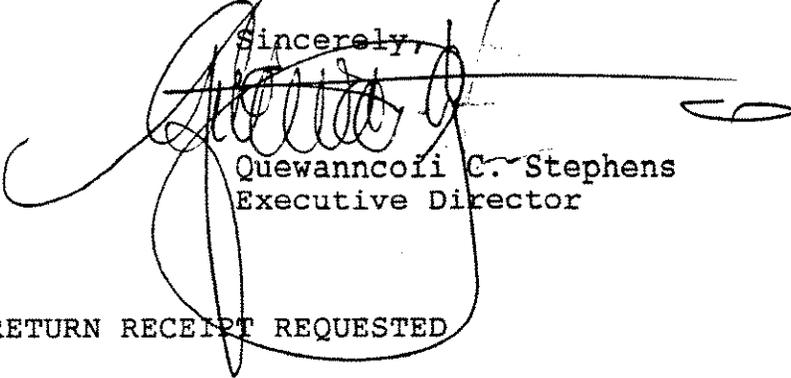
Bloss & Dillard, Inc.
1925 Adams Avenue
Huntington, WV 25701

Re: Sharon D. Hedrick v. Bloss & Dillard, Inc.
Docket No. ES-651-84

Dear Parties and Counsel:

Herewith, please find the Final Order of the WV Human Rights Commission in the above-styled and numbered case. Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for a review of this Final Order.

Sincerely,


Quewanncoii C. Stephens
Executive Director

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc: Secretary of State

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal, you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed, is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident may be required to file a bond with the clerk of the supreme court.

IN SOME CASES THE APPEAL MAY BE FILED IN THE CIRCUIT COURT OF KANAWHA COUNTY, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code § 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHARON D. HEDRICK,

Complainant,

v.

DOCKET NO. ES-651-84

BLOSS & DILLARD, INC.

Respondent.

FINAL ORDER

On 9 February 1990 the West Virginia Human Rights Commission entered an order finding that respondent, Bloss & Dillard, Inc., unlawfully discriminated against Sharon D. Hedrick, complainant, because of her sex and, furthermore, that respondent took unlawful reprisal action against complainant because she had filed a complaint of discrimination with this Commission. In its previous order the Commission noted that due to the inadequacy of the record, it was unable to award such relief to complainant as would make her whole, and, therefore, it instructed the parties to file with the Commission all evidence and documents relating to the amount of back pay, benefits and interest due complainant through January 1990.

After service of said order upon the parties, complainant submitted evidence and documents regarding back pay, benefits and interest allegedly due complainant. No reply was received from respondent, nor did it file any documents or other evidence on its behalf.

Based upon the documents filed by complainant, which respondent has not disputed, it is therefore, the Final Order of this Commission that complainant be awarded the following relief:

1. The complaints of Sharon D. Hedrick versus Bloss & Dillard, Inc., Docket Numbers ES-651-84 and REP-535-85 are sustained.

2. Complainant is ordered reinstated to her position as department head of the area from which she was fired and is to be paid a salary comparable to that of Robert Evanich. Until complainant is reinstated, she shall be paid a salary comparable to that of Robert Evanich beginning from the date of this Order.

3. Complainant is awarded back pay in the amount of \$237,242.64.

4. Complainant is awarded the sum of \$53,734.29 in compensation for her loss of benefits.

5. Complainant is awarded \$6,480.44 for signature and counter-signature fees.

6. Complainant and her counsel are awarded attorney's

fees and costs in the amount of \$21,375.00.

7. Complainant is awarded \$2,500.00 for incidental damages for humiliation, embarrassment, emotional and mental distress and loss of personal dignity suffered as a result of respondent's unlawful acts.

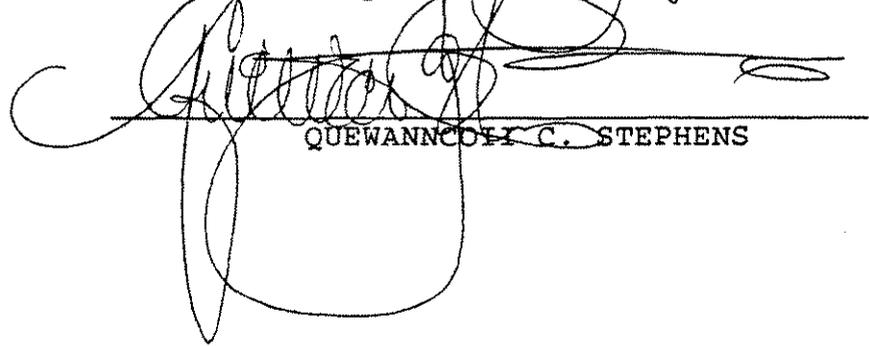
8. Respondent is hereby ordered to cease and desist from discriminating in its employment decisions on the basis of sex or from engaging in acts of reprisal against persons who file complaints with or otherwise avail themselves of the procedures and protection of the West Virginia Human Rights Act.

By this Final Order, and the Order previously entered, copies of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of State of West Virginia, the parties are hereby notified that they have ten (10) days to request that the Human Rights Commission reconsider this final order or they may seek judicial review as outlined in the "Notice of Right to Appeal" attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia
Human Rights Commission this 6th day of July,
1990 in Charleston, Kanawha County, West Virginia.



QUEWANNDEE C. STEPHENS

COPY

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHARON D. HEDRICK,

Complainant,

v.

DOCKET NOS. ES-651-84,
REP-335-85

BLOSS & DILLARD, INC.

Respondent.

RECEIVED

FEB 26 1990

Civil Rights Div.

ORDER

On 10 January 1990 the West Virginia Human Rights Commission reviewed the Recommended Findings of Fact and Conclusions of Law of the hearing examiner, Theodore R. Dues, Jr., filed in the above-styled matter. After consideration of the aforementioned recommendation and a review of the transcripts of hearing and other evidence of record, the Commission adopted said Proposed Order and Decision, encompassing the Findings of Fact and Conclusions of Law therein, as its own, with the modifications and amendments set forth below:

1. In subsection "Proposed Order" of the original Recommended Findings of Fact and Conclusions of Law, paragraph number two (2) is modified to read that the complainant is entitled to back pay in the amount of \$127,842.64, representing back pay due complainant from 1978 through the first quarter of 1987.

2. We add a section 6 to the Proposed Order awarding complainant \$2,500.00 for incidental damages for humiliation, embarrassment, emotional and mental distress and loss of personal dignity suffered as a result of respondent's unlawful acts.

3. Due to the inadequacy of the record, complainant shall submit all evidence and documents, with accompanying arguments if she so chooses, relating to the amount of back pay, benefits and interest due complainant from the first quarter of January 1987 up through and including January 1990. Complainant has ten (10) days from the receipt of this Order to comply with this request by serving said documents on the Executive Director of the Commission and counsel for respondent. Respondent shall have thirteen (13) days from date of service to file a response. Failure to comply shall result in a denial of relief or refusal by the Commission to consider any untimely document or argument. It is the intent of the Commission to issue a Supplemental Order regarding additional back pay on or before 31 March 1990. A Final Order, incorporating this order and the Supplemental Order, will also be issued at that time.

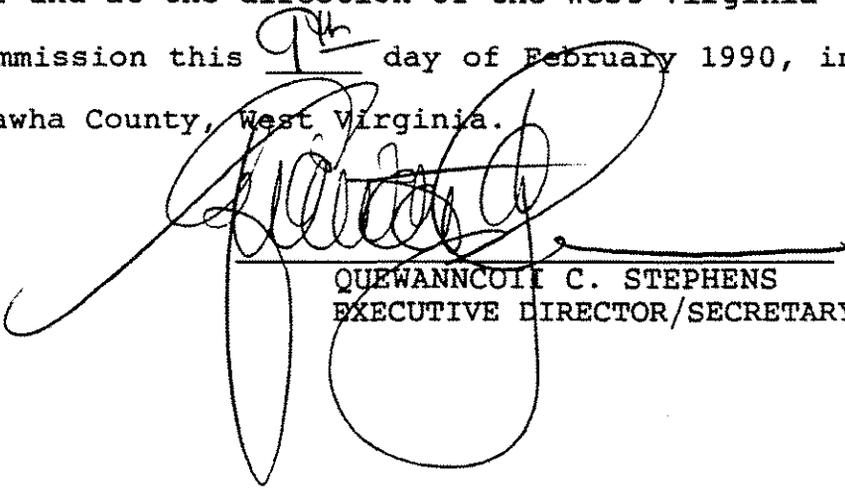
It is therefore, the Order of the Commission that the hearing examiner's Recommended Findings of Fact and Conclusions of Law, as modified herein, be attached hereto and made a part of this Order. The parties are advised that this

is not a Final Order for purposes of appeal, but that a Final Order will be issued simultaneously with the Supplemental Order as previously mentioned herein.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 9th day of February 1990, in Charleston, Kanawha County, West Virginia.



QUEWANNCOFF C. STEPHENS
EXECUTIVE DIRECTOR/SECRETARY

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHARON D. HEDRICK,
Complainant,

v.

BLOSS & DILLARD, INC.,
Respondent.

DOCKET NO: ES-651-84
REP-335-85 WV HUMAN RIGHTS COMM.
Answered

RECEIVED

MAR 10 1989

EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This matter matured for public hearing on October 10, 1985 and concluded on January 7, 1987. The hearing was held in the Conference Room of the law firm of Barrett, Chafin, Laury & Hampton, in Cabell County, Huntington, West Virginia. The hearing panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The presence of a Hearing Commissioner was previously waived by the parties.

The Complainant appeared in person and by her Counsel, Herbert H. Henderson and Dwight Staples. The Respondent appeared by its Representative, Earl Dillard and by its Counsel, Lafe C. Chafin and Maurice Flynn.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and

conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent to the findings and conclusions, the same are rejected.

ISSUES

1. Whether the Respondent discriminated against the Complainant on the basis of her sex regarding the terms and conditions of her employment.

2. Whether the Respondent committed acts of reprisal against the Complainant as a result of her having filed a charge with the West Virginia Human Rights Commission; more particularly, Docket No: ES-651-84.

3. If so, to what relief is the Complainant entitled.

FINDINGS OF FACT

1. The Complainant is a female.

2. The Complainant was employed with the Respondent in 1968. The Complainant's responsibilities initially were to be one of the principal's, Mr. Dillard's, personal secretary. She handled and assigned claims to adjusters as well. In 1977, the Complainant was made department head with the Respondent. The Complainant received no increase in pay at this time. Her areas of supervision were persons who worked at the switchboard, in the mobile home lines, and

two persons working in property lines.

3. At the time the Complainant became a department head, the other department heads, all male, had parking spaces provided by the Respondent. However, the Complainant had no such parking space provided for her.

4. During her tenure as department head, the Complainant received less salary than her male counterparts. In one instance, Mr. Hilton (although the Complainant had trained Mr. Hilton) he had received more pay in salary than she did. Mr. Black had the same function as the Complainant, yet he also received more pay than the Complainant. The same was true for Mr. Seabloom who was also the same level supervisor as the Complainant.

5. During her tenure with the Respondent, the Complainant performed her job functions in a satisfactory manner. In fact, on at least one occasion, Mr. Dillard suggested that the Complainant was his "right hand."

6. On another occasion, Mr. Dillard advised the Complainant that men were heads of the household and was entitled to more pay.

7. The Complainant's area of supervision was the major premium producer for the Respondent, during the relevant period of time.

8. During her tenure as a department head, the male department heads were provided access to a business credit card. The Complainant was never provided access to, or use of, the Respondent's company credit card.

9. During her tenure as a department head, male department heads were given the authority to fire employees. The Complainant did not have such authority.

10. For the first year she was a department head, the Complainant had to punch a time clock. The male department heads did not punch time clocks.

11. Upper management routinely overruled the Complainant's recommendations, although her male counterparts were not treated in this manner.

12. The Complainant's male counterparts were given opportunities to attend numerous seminars, although she did not receive similar opportunities.

13. Complainant's male counterparts had the use of company cars. The Complainant did not receive a company car. The Complainant, on several occasions, had to use her personal car to pick up persons that were conducting business with the Respondent.

14. The Complainant had a typewriter in her office, as well as, did the other female department heads, and, did in fact, perform typing, on a regular basis. However, the male department heads did not have typewriters nor did they perform their own typing.

15. The males were not required to follow dress codes, although females were under certain restrictions.

16. The Complainant was never paid a fee for countersigning policies generated in Ohio. Her predecessor, a male, was in fact paid a fee for performing this function.

17. Earl Dillard, a principal, in the Respondent's business, called the Complainant in on several occasions, after the filing of her complaint, seeking to have her dismiss the same. On at least one occasion, he promised her a certain position within the company. On another occasion, he used profanity in his conversation with her regarding the case.

18. Subsequent to the filing of the underlying complaint in this matter, Mr. Evanich would stand and stare at the Complainant for extended periods of time. Additionally, there would be excessive passes in front of the Complainant's cubicle, during the course of a day.

19. Earl Dillard made it a practice to frequently manipulate his private parts in front of the Complainant.

20. On occasion, the Complainant would participate in office jokes and levity which stemmed from Earl Dillard's manipulation of his genitals and some sexual suggestive comments in jest such as "squeeze me."

21. The Complainant incurred a loss in wages as a result of the disparity in pay between her and her male counterparts.

22. The Complainant has incurred loss of salary and benefits as a result of termination.

21. The Complainant has incurred attorney fees and costs as a result of the prosecution of this matter.

DISCUSSION

The Complainant established a prima facie case of sex discrimination by establishing that the Respondent provided certain benefits to male department heads that were not afforded to female department heads; more specifically parking spaces, equal salary, hiring and firing discretions, equal voice in business decisions, company cars, and access to company credit cards. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 LEd.2d 668 (1973); Shepherdstown Volunteer Fire Department v. Human Rights Commission, 309 S.E.2d 342 (W.Va. 1983); West Virginia human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E.2d 77 (W.Va. 1985); Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

The Complainant also established a prima facie case of reprisal by proving that she engaged in a protected activity, that the employer was aware of the protected activity, and that she was subsequently treated disparately as a result of engaging in the protected activity. Frank's Shoe Store v. West Virginia Human Rights Commission and Kathy Varney, S.E.2d. (W.Va. 1987). The evidence of record establishes that Earl Dillard, a principal of the Respondent, undertook a personal effort to induce the Complainant to dismiss her case filed with the West Virginia Human Rights Commission by promising her a position within the company, and, on at least one occasion, threatening her

with profanity. Additionally, the record reflects that efforts of harassment were made by standing and staring at the Complainant for a long period of time and passing within the Complainant's work area in an unusual frequency; all of which were calculated to intimidate and induce the Complainant to dismiss her case against the Respondent.

The Respondent failed to articulate legitimate nondiscriminatory reasons for any of the allegations of disparity in treatment between male and females employed, in similar positions, by the Respondent, with the exceptions of: 1.) Earl Dillard's manipulation of his genitals in front of the Complainant was, from time to time, the subject of jokes even by the Complainant; and 2.) the use of a company credit card was apparently a result of either Earl Dillard or Bill Johe, the two principals in the company, providing use of the card to and for the benefit of its department heads. The position taken by the Complainant regarding the use of the credit card is provided weight, to the extent that the only time that she had benefit of the credit card was, in a collateral manner, during times, in which she would be in a meeting, in which her male counterparts were present and one of them would have the actual possession of the company credit card.

As for the residual allegations of the complaint, including the reprisal claim, the Respondent failed to articulate a credible reason for its actions. Texas Department of Community Affairs v. Burdine, 450 U.S. 248,

101 S.Ct. 1089, 67 L.Ed.2d 207 (1981); State of West Virginia Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E. 2d. 77 (1985); McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

Accordingly, it is the determination of the Examiner that the Complainant proved by a preponderance of the evidence that she was discriminated against on the base of her sex and that upon filing a petition with The West Virginia Human Rights Commission seeking relief for what she were believed violations by the Respondent, the Respondent, after being on actual notice of her protected conduct, did take retaliatory action against her based upon her protected activity.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter herein.
2. The Complainant has established a prima facie case of sex discrimination and reprisal.
3. The Respondent failed to articulate credible legitimate reasons for its conduct.
4. The Complainant incurred a loss of income and benefits as a result of the disparity in pay, during her tenure, and the loss of income and benefits after her termination.
5. The Complainant is entitled to the

countersignature fees to the extent that they were proven.

6. The Complainant is entitled to reasonable attorney's fees and cost as a result of the prosecution of this matter.

PROPOSED ORDER

Accordingly, it is the recommendation of this Examiner that the Commission award judgment for the Complainant and provide the following relief:

1. Reinstatement to her position as department head of the area from which she was fired with restoration of full benefits and back pay, with prejudgment interest thereon at the rate of 10% per annum until paid.

2. The Complainant is entitled to back pay in an amount to be later submitted by the Examiner. The parties are directed within ten days from the date of entry of this Order to provide updated calculations of the back pay and benefits for which the Complainant is entitled.

3. The Complainant is entitled to signature and countersignature fees in the amount of \$6,480.44.

4. The Complainant's Counsel is entitled to reasonable fees and costs, as per their submitted affidavit of itemized fees and costs, in the aggregate amount of \$21,375.00.

5. Cease and desist Order. issue against the Respondent prohibiting any future violations of The West Virginia Human Rights Act in the course of its business.

DATED: February 24, 1989

ENTER:

722.55
Theodore R. Dues, Jr.
Hearing Examiner